DISTRICT OF COLUMBIA

DOH Office of Adjudication and Hearings
825 North Capitol Street N.E., Suite 5100
Washington D.C. 20002

DISTRICT OF COLUMBIA DEPARTMENT OF HEALTH Petitioner, v. WILLIAM PETERSON Respondent	Case Nos.: I-00-60018 I-00-60111

FINAL ORDER

I. Introduction

On December 12, 2000, the Government served a Notice of Infraction (No. 00-60018) upon Respondent William Peterson, charging him with a violation of D.C. Code § 2-3310.2, now codified as D.C. Code § 3-1210.02 (2001 ed.).[1] That statute prohibits false representations to the public that a person is authorized to practice a health occupation in the District of Columbia. The Notice of Infraction alleged that the infraction occurred or was determined on December 12, 2000 at 216 17th Place, N.E., and sought a fine of $500.

Respondent did not file an answer to the Notice of Infraction within the required fifteen days after service. D.C. Code § 6-2712(e), now codified as D.C. Code § 2-1802.02(e) (2001 ed.). Accordingly, on January 9, 2001, this administrative court issued an order finding

[1] The Notice of Infraction also names Rutherford Neurology as a Respondent. The evidence revealed, however, that "Rutherford Neurology" is merely a trade name used by Respondent and not the name of an entity with legal capacity to be a Respondent before this administrative court. Rutherford Neurology, therefore, will be dismissed from this case.

Respondent in default, assessing the statutory penalty of $500 authorized by D.C. Code § 6-2704(a)(2)(A), now codified as D.C. Code § 2-1801.04(a)(2)(A) (2001 ed.), and requiring the Government to serve a second Notice of Infraction.

The Government served the second Notice of Infraction on January 19, 2001. Respondent later filed a plea of Deny to both the first and second Notices of Infraction. I then issued an order setting an evidentiary hearing for March 21, 2001. All parties appeared on the hearing date. Nan Reiner, Esq. represented the Government and Respondent appeared *pro se.* Based upon the testimony of all the witnesses, my evaluation of their credibility, the documents introduced into evidence and the entire record in this matter, I now make the following findings of fact and conclusions of law.

II. Findings of Fact

Dr. Peterson practiced medicine in North Carolina using the trade name "Rutherford Neurology" until 1999. He closed his practice at that time and moved to the District of Columbia. He had a District of Columbia license to practice medicine, but it expired in 1997. After moving here, Dr. Peterson did not see or treat any patients, nor did he open an office in the District. He did, however, send at least two bills to a former patient in North Carolina, attempting to recover $36.10 that he claimed the patient owed him for services rendered in 1999. Petitioner's Exhibits ("PX") 104, 106. Dr. Peterson had been involved in a long-standing dispute with that patient over billing and other issues.

The letterhead on each bill read, in part:

WILLIAM PETERSON, M.D.
RUTHERFORD NEUROLOGY
216 17th Place N.E.
WASHINGTON, D.C. 20002

The letterhead also listed a District of Columbia phone number. The return address on the envelopes in which the bills were sent identified the sender as "William Peterson, M.D." at the 17th Place address. PX 101, 103.

The former patient believed that she did not owe Dr. Peterson anything, and complained to the District of Columbia Board of Medicine that Dr. Peterson might be practicing medicine without a license. Bryan Chase, the investigator who issued the Notice of Infraction, investigated that claim. He observed the 17th Place address on three separate occasions. He found no indications that Dr. Peterson was practicing medicine there. No signs indicated that a doctor's office was located there, and Mr. Chase observed no potential patients entering or leaving the building. Dr. Peterson testified credibly that he lived with his mother at the 17th Place address and that he did not practice medicine there. He also testified credibly that he mailed the bills only to collect money that he believed he was owed, and that he did not intend to represent to the former patient or to anyone else that he was practicing medicine in the District of Columbia.

Concerning his failure to file a timely response to the Notice of Infraction, Dr. Peterson testified credibly that he spoke with Mr. Chase by telephone after he received the Notice of Infraction, and soon afterwards mailed a letter explaining his position to Mr. Chase. In that letter, he enclosed his copy of the Notice of Infraction, with a plea of Deny checked. That letter

was returned to him by the Postal Service several weeks after he sent it. Dr. Peterson then spoke with Mr. Chase again, who told him that a new hearing date would be set, an apparent reference to the issuance of a second Notice of Infraction due to Dr. Peterson's failure to file a timely response to the first Notice of Infraction.

III. Conclusions of Law

A. Liability for the Violation

The Government alleges that Dr. Peterson violated D.C. Code § 2-3310.2, now codified as D.C. Code § 3-1210.02 (2001 ed.). That statute provides:

> Unless authorized to practice a health occupation under this chapter, a person shall not represent to the public by title, description of services, methods, or procedures, or otherwise that the person is authorized to practice the health occupation in the District.

To establish a violation of this section, the Government must prove, at a minimum: 1) that the Respondent is not authorized to practice a health occupation in the District of Columbia; 2) that the Respondent represented, either by title, description of services methods or procedures, or in some other fashion, that he or she was authorized to practice a health occupation in the District; and 3) that the Respondent made such a representation to the public.[2] The practice of medicine is included within the definition of a "health occupation," D.C. Code §§

[2] The Government does not take issue with Dr. Peterson's testimony that he had no intent to represent that he was authorized to practice, but contends that § 2-3310.2 does not require it to prove the Respondent's intent. In light of my ruling below that Dr. Peterson did not represent that he was authorized to practice medicine, I do not decide in this case whether the Government must prove intent in a §2-3310.2 case.

2-3301.1(7), 2-3301.2 (7), now codified as D.C. Code §§ 3-1201.01(7), 3-1201.02(7), and it is undisputed that Dr. Peterson is not authorized to practice medicine in the District. The question presented by the evidence is whether Dr. Peterson's mailing of two bills to a former patient in North Carolina represented to the public that he was authorized to practice medicine here.

The Government focuses upon Dr. Peterson's use of the title ""M.D." on both the letterhead and in the return address, along with his use of the term "Neurology" on the letterhead. It argues that those terms, combined with the use of a District of Columbia address, represent to the public that Dr. Peterson is permitted to practice here. Ordinarily, the use of a medical title such as "M.D." or a medical term such as "neurology" in a description of services offered to the public contains an implied representation that a person is authorized to perform such services. *DOH v. Milton,* OAH No. I-00-60106 at 8 (Final Order, March 20, 2001) (Use of "D.D.S." on signs and business cards and "Dentistry" on office door represents availability to perform dental services and implies that user is authorized to do so.) Not all uses of medical titles or terminology, however, describe professional services being offered to the public. For example, a medical school professor may be described as a professor of neurology or a physician employed by a government agency may use the title "M.D." *See Morris v. District of Columbia Board of Medicine,* 701 A.2d 364, 369 (D.C. 1997) (Physician employed by a health insurer who signed complaint letters to the Board of Medicine using title "M.D." and "Medical Director" did not thereby represent that he was practicing medicine.) The proper inquiry under § 2-3310.2 is not simply whether the Respondent used a medical title or a medical term such as neurology, but whether the use of that title or term, considered in its context, would communicate to a reasonable person that the Respondent is offering medical services to the public.

The two bills that Dr. Peterson mailed to his former patient contained no express representation that he was offering medical services, either to the public generally or to the former patient individually. On their face, the bills claim that Dr. Peterson previously provided medical services in North Carolina, not that he presently was providing such services in the District of Columbia. In the circumstances of this case, no representation of present practice reasonably can be implied from the bills. The Government conceded at the hearing that Dr. Peterson was entitled to attempt to collect payments that he believed he was owed by patients in North Carolina after he moved to the District of Columbia. As a practical matter, any communications he sent in furtherance of such attempts needed to identify him. If a patient previously received services from Dr. Peterson under the trade name "Rutherford Neurology," a bill from "William Peterson, M.D./Rutherford Neurology" would be the most effective way to identify the bill's sender. Similarly, asking the recipient to send payment to Dr. Peterson's current address in the District of Columbia would be the most efficient way to ensure that Dr. Peterson got paid.

To be sure, the use of medical titles or terminology in letterheads, business cards or other documents, when considered in context, may imply that the user is entitled to practice medicine. Indeed, when used in a description of services being offered to the public, such titles or terms usually do imply such authorization. *Milton, supra.* In this case, however, Dr. Peterson used "M.D." and "Neurology" only to identify himself as the sender of a bill for services previously rendered outside the District of Columbia. He did not imply that he was currently providing medical services in the District of Columbia merely by seeking payment for prior services rendered elsewhere. As in *Morris*, "having used stationery reflecting his District address, [Dr. Peterson] would have been better advised in any event to disclaim licensure in the District . . . ."

701 A.2d at 369. But, as in *Morris,* the context of Dr. Peterson's representations demonstrates that he was not claiming authority to practice in the District. He therefore did not violate § 2-3310.2.

B. Liability for Failure to File a Timely Response

The Civil Infractions Act, D.C. Code § 6-2712(f), now codified as D.C. Code § 2-1802.03 (2001 ed.), requires the recipient of a Notice of Infraction to demonstrate "good cause" for failing to answer it on time. If a party can not make such a showing, the statute requires that a penalty equal to the amount of the proposed fine must be imposed. D.C. Code §§ 6-2704(a)(2)(A), 6-2712(f). Dr. Peterson attempted to file a timely response to the Notice of Infraction, but sent it to the inspector, instead of to the Clerk's office. In doing so, he overlooked the directions on the Notice of Infraction form, which instruct a party who wishes to plead Deny to mail the response to the Infractions Clerk of the Office of Adjudication and Hearings, not to the inspector who issued the Notice of Infraction. Acting contrary to the instructions on the Notice of Infraction does not satisfy the statutory "good cause" standard, but Dr. Peterson's good faith, albeit mistaken, effort to file a timely response supports a reduction of the statutory penalty. That penalty will be reduced to $250.

V. Order

Based upon the foregoing findings of fact and conclusions of law, it is, this _____ day of _____, 2001:

ORDERED, that "Rutherford Neurology" is dismissed as a Respondent in this case; and it is further

ORDERED, that Respondent, William Peterson is **NOT LIABLE** for violating D.C. Code § 2-3310.2 as alleged in the Notices of Infraction; and it is further

ORDERED, that Dr Peterson shall pay a penalty of **TWO HUNDRED FIFTY DOLLARS ($250.00)** in accordance with the attached instructions within twenty (20) calendar days of the date of service of this Order (15 days plus 5 days service time pursuant to D.C. Code §§ 6-2714 and 6-2715, now codified as D.C. Code §§ 2-1802.04 and 2-1802.05 (2001 ed.); and it is further

ORDERED, that if Respondent fails to pay the above amount in full within twenty (20) calendar days of the date of mailing of this Order, interest shall accrue on the unpaid amount at the rate of 1 ½% per month or portion thereof, starting from the date of this Order, pursuant to section 203(i)(1) of the Civil Infractions Act, D.C. Code § 6-2713(i)(1), as amended by the Abatement and Condemnation of Nuisance Properties Omnibus Amendment Act of 2000, D.C. Law 13-281, effective April 27, 2001, now codified as D.C. Code § 2-1802.03(i)(1) (2001 ed.) ; and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's licenses or permits pursuant to D.C. Code § 6-2713(f), now codified as D.C. Code § 2-1802.03(f) (2001 ed.), the placement of a lien on real and personal property owned by Respondent pursuant to D.C. Code § 6-2713(i), now codified as D.C. Code § 2-1802.03(i) (2001 ed.) and the sealing of Respondent's business premises or work sites pursuant to D.C. Code § 6-2703(b)(7), now codified as D.C. Code § 6-1801.03(b)(7) (2001 ed.).

/s/ 12/04/01

John P. Dean
Administrative Judge